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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ROQUE DE LA FUENTE,

9 Plaintiff,

v.

10 KIM WYMAN, in her official capacity
11 as the Secretary of State of the State of
Washington,

12 Defendant.

CASE NO. C20-5045 BHS

ORDER DENYING PLAINTIFF'S
MOTION FOR A TEMPORARY
RESTRAINING ORDER AND
REQUESTING A JOINT STATUS
REPORT

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14 This matter comes before the Court on Plaintiff Roque De La Fuente's
15 ("Plaintiff") emergency motion for a temporary restraining order. Dkt. 8.

16 On January 17, 2020, Plaintiff filed a complaint against Defendant Kim Wyman in
17 her official capacity as the Secretary of State of the State of Washington ("State"). Dkt.

18 1. Plaintiff asserts that RCW 29A.56.031 violates the United States Constitution because
19 it "imposes the additional qualification on citizens otherwise qualified to hold the Office
20 of President of the United States that they comply with any additional requirement
21 imposed by a political party to gain access to a taxpayer-funded presidential primary
22 ballot." *Id.* ¶ 46. Plaintiff alleges that he is a candidate for President, has the desire to

1 run as a representative of the Republican party in Washington State, and seeks to have his
2 name appear on the primary ballot as a Republican candidate. *Id.* ¶ 15. RCW
3 29A.56.031 requires that the chair of the Washington Republican Party submit the names
4 to the State of all candidates for that party. The Washington Republican Party imposes a
5 contribution fee of \$12,000 “as a condition precedent to secure access to Washington’s
6 presidential primary election ballot.” *Id.* ¶ 18. Plaintiff did not pay the fee, and the
7 Washington Republican Party refused to certify that he was qualified to appear on the
8 primary ballot in the State. Plaintiff seeks a declaration that RCW 29A.56.031 is
9 unconstitutional and an injunction ordering the State to place his name on the primary
10 ballot as a Republican candidate.

11 On January 22, 2020, Plaintiff filed an emergency motion for a temporary
12 restraining order requesting an injunction preventing the State “from printing any
13 Republican presidential primary ballots without the name of Plaintiff printed thereon.”
14 Dkt. 8 at 17.

15 A plaintiff seeking preliminary relief must establish that he is likely to succeed on
16 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
17 that the balance of equities tips in his favor, and that an injunction is in the public
18 interest. *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008). The Ninth
19 Circuit “has adopted and applied a version of the sliding scale approach under which a
20 preliminary injunction could issue where the likelihood of success is such that ‘serious
21 questions going to the merits were raised and the balance of hardships tips sharply in
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1 [plaintiff's] favor.'" *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th
2 Cir. 2011).

3 **A. Likelihood of Success**

4 Plaintiff presents two arguments that he is likely to succeed on the merits. First,
5 Plaintiff argues that RCW 29A.56.031 presents an improper additional qualification on
6 candidates for President. Dkt. 8 at 9–14. Under binding precedent, the Court must
7 determine whether the statute in question either creates “an absolute bar to candidates,
8 who otherwise meet the requirements of the Qualifications Clause” or has the “likely
9 effect of handicapping an otherwise qualified class of candidates.” *Schaefer v.*
10 *Townsend*, 215 F.3d 1031, 1035 (9th Cir. 2000). Plaintiff argues the latter test applies.
11 Plaintiff, however, fails to cite any binding or persuasive authority that a State’s
12 delegation of selecting primary candidates for a major political party to that party’s
13 leadership has the likely effect of handicapping an entire class of candidates. At most,
14 binding precedent precludes a state from implementing regulations that handicap all
15 potential candidates regardless of party affiliation. Here, the State delegates to the
16 *political* party the decision to choose its *political* nominees for the primary ballot. The
17 only candidates that are allegedly handicapped are those that fail to gain such a
18 nomination from that political party, and Plaintiff fails to cite any precedent or persuasive
19 authority to establish that this regulation and/or delegation is unconstitutional. Therefore,
20 Plaintiff has failed to establish that he is likely to succeed on the merits of this argument.

21 Second, Plaintiff argues that the \$12,000 payment is an unconstitutional loyalty
22 oath. Dkt. 8 at 14–15. The main problem with Plaintiff’s argument is that he fails to

1 allege personal participation on behalf of a state actor to bring such a claim under 42
2 U.S.C. § 1983. Although Plaintiff cites authorities in support of his position, every one
3 of those authorities addresses a state statute that requires the alleged oath. *See*
4 *Communist Party of Indiana v. Whitcomb*, 414 U.S. 441, 446 (1974) (state statute
5 requiring oath that party did not intend to “overthrow of local, state, or national
6 government by force or violence”); *Biener v. Calio*, 361 F.3d 206 (3rd Cir. 2004) (state
7 statute requiring filing fee for primary candidates); *Green Party of Tennessee v. Hargett*,
8 791 F.3d 684, 696 (6th Cir. 2015) (state statute requiring oath that party did not intend to
9 “overthrow of local, state, or national government by force or violence”). Therefore,
10 Plaintiff has failed to establish that he has stated a valid claim against the State for an
11 improper loyalty oath much less that he is likely to succeed on the merits of such a claim.

12 **B. Balance of Equities**

13 It should be noted that Plaintiff and his counsel have previously filed an
14 “emergency” motion without clearly identifying any actual emergency. *See De La*
15 *Fuente v. Wyman*, C16-5801 BHS, Dkt. 10 (W.D. Wash. Sep. 21, 2016). Similarly,
16 Plaintiff again fails to identify any emergency. The State’s website, however, identifies
17 January 7, 2020 as the date primary candidates must be certified by the major political
18 parties and January 25, 2020 as the date primary ballots are mailed to members of the
19 military and voters living overseas.
20 [https://www.sos.wa.gov/elections/candidates/presidential-primary-candidate-](https://www.sos.wa.gov/elections/candidates/presidential-primary-candidate-information.aspx)
21 [information.aspx](https://www.sos.wa.gov/elections/candidates/presidential-primary-candidate-information.aspx). Thus, Plaintiff not only waited ten days from the certification deadline
22 to file his complaint, he also waited five days after filing his complaint and a mere three

1 days before ballots would be mailed to file this emergency motion. The Court finds that,
2 at the very least, Plaintiff has failed to establish that the balance of equities tips in his
3 favor with such delay. At most, the balance tips in the State's favor by having to print
4 and distribute thousands on ballots on a publicly set timeframe that would be jeopardized
5 by a delayed request for injunctive relief.

6 Therefore, the Court **DENIES** Plaintiff's motion for a temporary restraining order,
7 Dkt. 8. Plaintiff also seeks a preliminary injunction. The Court requests a joint status
8 report ("JSR") from the parties regarding how they intend to proceed with a preliminary
9 injunction in light of this order. The JSR shall be filed no later than January 31, 2020.

10 **IT IS SO ORDERED**

11 Dated this 23rd day of January, 2020.

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14 BENJAMIN H. SETTLE
15 United States District Judge
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